under 37 C.F.R. §1.7. Accordingly, this Communication is being timely filed.

REMARKS

In the October 18, 2006 Office Action, the Examiner required restriction to one of the following five inventions under 35 U.S.C. §§ 121 and 372:

I. Claims 27-41, drawn to a substance or composition that binds to molecules containing a Nuclear Localization Signal (NLS) or other regions of vpr or tat or functional portions or derivatives thereof;

II. Claims 42-45, drawn to a method for inhibiting import of molecules containing a NLS, especially tat and vpr, into a nucleus;

III. Claims 46-47, drawn to a method for inhibiting viral infection;

IV. Claims 48-49, drawn to a method for inhibiting cell proliferation, oncogenesis and an auto immune response; and

V. Claim 50, drawn to a method of conferring immunity to viral infection.

The Examiner also required applicants to elect one single species from the following:

a) substances that bind vpr (claims 27, 28, and 30) or tat (claims 27-29, 31, and 32) or fragments thereof;

b) naturally occurring, synthetic or recombinant antibody, scFv, Fv, Fab', Fab, diabody, linear antibody, F(ab')2 antigen binding fragment of an antibody, a protein, a peptide and a small molecule or fragment thereof (claims 33-35);

c) a molecule having its CDR3 specifically defined (36-37); or

d) the p8 protein of the fd bacteriophage or a bacteriophage fd pS-derived peptide (claims 38-40).

In response, applicants elect, with traverse, for reasons which follow, Group I, i.e. claims 27-41.

In addition, applicants elect the species defined by naturally occurring, synthetic or recombinant antibody, scFv, Fv, Fab', Fab, diabody, linear antibody, F(ab')2 antigen binding fragment of an antibody, a protein, a peptide and a small molecule or fragment thereof. Each of claims 27-41 reads on the elected species.

Applicants, respectfully request that the Examiner reconsider and withdraw the restriction requirement.

In connection with this election, applicants point out that claims 42-45 defined by the Examiner as Group II include all the limitations of now elected claims 27, 30, 29 and 30,

respectively. Accordingly, as an initial matter, applicants request that claims 42-45 be examined together with claims of Group I. Similarly, claims 46 and 47 identified by the Examiner as Group III, claims 48 and 49 identified by the Examiner as Group IV, and claim 50 identified by the Examiner as Group V, each include the limitations of now elected claim 27. Accordingly, applicants request that claims 46-50 also be examined with the claims of Group I.

Applicants traverse the requirement for restriction on the basis that the claims have a common inventive concept in compliance with PCT Rule 13.1. Pursuant to 37 C.F.R. §1.499, Rule 13.1 governs restriction practice in the subject national stage application filed under 35 U.S.C. §371.

Applicants note that the Unity of Invention, as set forth in PCT Rule 13.1, is fulfilled when "there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features. The expression "special technical features" shall mean those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art."

In this regard, applicants were the first to identify and disclose the substance that specifically binds at least one of the N-terminal domain of Vpr (amino acids 17-34) or its functional fragment or its derivative, the nuclear localization signal (NLS) of Vpr or its derivative, the HIV-1 protein Tat or its NLS, or the ARM sequence of Tat, as recited in independent claim 27 elected herein. This substance is common to all of the claims in the subject application and

constitutes a special technical feature of each and every pending claim. Accordingly, all the pending claims share at least this special technical feature making restriction into Groups I-V improper under PCT Rule 13.1.

In addition, applicants point out that pursuant to M.P.E.P. §1850(II):

> **Unity of invention has to be considered in the first place only in relation to the independent claims in an international application and not the dependent claims.** By "dependent" claim is meant a claim which contains all the features of one or more other claims and contains a reference, preferably at the beginning, to the other claim or claims and then states the additional features claimed (PCT Rule 6.4). The examiner should bear in mind that a claim may also contain a reference to another claim even if it is not a dependent claim as defined in PCT Rule 6.4. One example of this is a claim referring to a claim of a different category (for example, "Apparatus for carrying out the process of Claim 1…," or "Process for the manufacture of the product of Claim 1…"). Similarly, a claim to one part referring to another cooperating part, for example, "plug for cooperation with the socket of Claim 1…") is not a dependent claim.

According to the above guidance, claims 42-50 identified by Groups II-V are claims which depend from, and include the limitations of, now elected independent claim 27; none of the claims in purported Groups II-V are "independent" of the elected invention but rather contain all of the elements of the elected invention. Accordingly, applicants maintain that

the Examiner has improperly required restriction between claims 27-50.

Furthermore, pursuant to Section (e)(i) of Annex B of Administrative Instructions Under the PCT provide that claims to a product should be examined with claims to a use of that product.

In conclusion, applicants maintain that claims 27-50 define a single inventive concept. Accordingly, applicants respectfully request that the Examiner reconsider and withdraw the restriction requirement and examine claims 27-50 on the merits.

If a telephone interview would be of assistance in advancing prosecution of the subject application, applicants' undersigned attorneys invite the Examiner to telephone them at the number provided below.

No fee, other than the enclosed $510.00 fee for a three-month extension of time, is deemed necessary in connection with the filing of this Communication. However, if any additional fee is required, authorization is hereby given to charge the amount of such fee to Deposit Account No. 03-3125.

Respectfully submitted,

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I hereby certify that this correspondence is being deposited this date with the U.S. Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450

Gary J. Gershik 2/20/07
Gary J. Gershik Date
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